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It is rare that we meet a Grotius, or a Bentham, or a von Ihering. This makes the task of presentation to readers of the legal profession the more difficult. And besides the necessary technicalities there are needless ones. German philosophy in particular has built up a language of its own, of which Dr. Berolzheimer justly complains.

But in spite of these difficulties, largely inherent in the nature of the material, the reader who works through the shell will find plenty of meat. For he is reflecting on the questions of justice in company with the great thinkers of all time. It is a pleasure to record the author's grasp of the larger principles of the development traced. The significance of the economic schools is lucidly interpreted. As the survey approaches the present and affords fuller treatment of recent or living authors it is possible to give more adequate statements of doctrines. The criticisms are incisive. The accounts of such writers as Kohler, von Ihering, and Stammler should be welcomed by many to whom these authors have not been accessible. But the great significance of such a genetic account of legal philosophies is that it tends to weaken our confidence, that we know what justice is. It shows not only how this or that act has been variously judged, but how the very idea of justice itself has changed. As the various absolutisms of the church, the nobility, the monarch, the law, have followed in order, and as successive classes have one by one gained emancipation, the "natural," or "reasonable," or "just" was inevitably affected. To grasp this is the antecedent of such broader views as the Editorial Committee aims to secure by the publication of the series of translations in which this is Vol. II.

Apart from questions of perspective and terminology there are some qualifications as to adequacy of treatment which I mention dogmatically, prefacing them with the obvious remark that no writer covering so wide a field can be expected to be equally successful with all parts of it. In this case, as is natural, English authors are less adequately treated than German. With Locke, it does not follow that because he was an empiricist in his theory of knowledge his philosophy of law proceeds upon an empirical basis. It is misleading to say that Bentham "champions an epicurean, individual type of utilitarianism," for although his psychology of motives was hedonistic his life-long activity as a reformer of the law and his goal, "the greatest happiness of the greatest number," make the term "epicurean" inappropriate. (Incidentally, it will seem to most English readers disproportionate to allot the Pythagoreans three pages and Bentham two). Spencer's whole treatise on Justice which contains the matured attempt of its author to deduce legal principles from biological laws is not referred to. To point out the philosophy, implicit if not explicit, in Blackstone would also seem desirable.

The translation appears to be excellent. It does not read like a translation. The only general suggestion which I should make is that in the citations from such writings as those of Kant, Fichte, Hegel, Schopenhauer, of most of which we have good translations, the references should be to these and not to the originals which are presumably not so accessible to the user of a translated text.

By such works as this the way will be prepared for what would seem a still more desirable undertaking. A survey neither of the philosophies as such, nor of the law by itself, but of the philosophy *in* the law.

J. H. T.

THE COURTS, THE CONSTITUTION, AND PARTIES. Studies in Constitutional History and Politics. By Andrew C. McLaughlin. Chicago: The University of Chicago Press. 1912. pp. vii, 299.

This volume is composed of five papers or addresses given by the author upon various recent occasions, dealing with the topics indicated in its title. Two of them are careful historical discussions of the origin of the American

doctrine that courts can declare acts of the legislature void; a third shows the influence of theories of political philosophy upon the ante-bellum controversy regarding the nature of the Union; and the remaining two consider the significance of American political parties and their real function in popular government.

To the reviewer the two papers first mentioned seem to be contributions of great and permanent value to the discussion of their topic, and perhaps the most important since Professor Thayer's well-known essay upon the subject. The theory of social compact and the earnest desire to limit government by some power outside of itself, both inherited by the colonial Englishmen of the eighteenth century from their political forebears of the Rebellion in England, are convincingly shown to have been the really effective influences in launching and sustaining the doctrine that an unconstitutional act of the legislature may be disregarded by the courts. As becomes a sound lawyer, as well as a careful historian, Professor McLaughlin does not fail to point out what current discussions commonly ignore, that this is conceived as no duty peculiar to the courts but that it rests equally upon all other officers of government, or, for that matter, upon all individuals within the jurisdiction. They, as well as the judges, are under an obligation not to violate the constitution, though bidden to do so by the legislature, and, under the Anglo-American principle of the supremacy of law over even governmental action which infringes private rights, public officers are individually liable for the violation of any law applicable to their acts, including of course the supreme law, the Constitution. Thus was realized in some fashion the dream of those who sought to impose ordered limitations upon government itself, and chiefly through the medium of the courts because their judicial function compelled them to decide finally, as between individuals, controversies about the meaning of constitutions. Dreams change with the centuries, and if to-day the ideal of the right of society to act for the collective good begins to dim the older vision of the right of the individual to be protected from the tyranny of government, that is no good reason for misreading history.

Professor McLaughlin's book, tracing the ancestry of the political ideals of the Revolution, and Professor Beard's recent article, "The Supreme Court — Usurper or Grantee,"[1] investigating the individual views of the framers of the federal Constitution, have replaced plausible conjecture with tolerable certainty regarding two important phases of the question to which they relate.

The style of all of these essays is easy and delightful and their argument sane, thoughtful, and persuasive. The ones discussing political parties are marked by a quiet humor, and disclose glimpses of the author's political philosophy that tempt one to hope he may before long elaborate it further.

J. P. H.

HANDBOOK ON THE LAW OF JUDICIAL PRECEDENTS, OR THE SCIENCE OF CASE LAW. By Henry Campbell Black. St. Paul: West Publishing Company. 1912. pp. xv, 768.

This is a full and laborious treatment of a subject of considerable practical importance never before covered by a treatise. The work falls into four parts: (1) Decisions and *dicta;* (2) The doctrine *stare decisis* and the binding effect of precedents; (3) The modern doctrine of "law of the case"; (4) The effect of precedents in the state courts upon decisions in the federal courts.

The treatment of the last two parts is thorough and apparently well done. No other book can so well direct the investigator to the law on the novel and important questions discussed. The first half of the book cannot be so highly

[1] Political Science Quarterly (March, 1912).